

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Nakano and Correa Analyst: Roger Lackey Bill Number: AB 1875
Related Bills: None Telephone: 845-3627 Amended Date: 03-07-2002
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Corporations/Certificate of Dissolution

SUMMARY

This bill would allow certain corporations to dissolve without obtaining a tax clearance certificate.

PURPOSE OF THE BILL

According to the authors' offices, the purpose of this bill is to allow corporations that have not done business to dissolve easily.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative January 1, 2003.

POSITION

Pending.

Summary of Suggested Amendments

Department staff is available to assist the author in developing amendments to resolve the concern addressed in this analysis.

ANALYSIS

FEDERAL/STATE LAW

Federal law requires that within 30 days after a corporation adopts a plan of partial or complete dissolution or liquidation, the corporation must file an information return that sets forth the resolution or plan for dissolution or liquidation. The return must be filed regardless of whether shareholders recognize any gain or loss under the plan.

Existing state law requires that prior to the dissolution of a corporation, the corporation must obtain a Tax Clearance Certificate from the Franchise Tax Board (FTB) certifying that its tax liabilities, if any, have been paid, assumed, or guaranteed by bond or otherwise.

Board Position:

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<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Gerald H. Goldberg

04/17/02

Under California law, for a corporation seeking dissolution, a Certificate of Dissolution and the request for a Tax Clearance Certificate are submitted to the Secretary of State (SOS). The SOS files the Certificate of Dissolution and transmits the tax clearance documentation to FTB. FTB then either issues the Tax Clearance Certificate or notifies the requesting corporation of the amount of tax that must be paid, or the amount of bond, deposit, or other security that must be furnished as a condition of issuing the certificate. FTB notifies the SOS when all taxes have been paid or secured. The corporation is deemed dissolved as of the date the original Certificate of Dissolution was filed. The dissolved corporation is no longer subject to the minimum franchise tax for taxable years beginning on or after the date of dissolution.

Existing state law provides that every corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state is subject to the minimum franchise tax. Liability for the minimum franchise tax begins on the earlier of the date of incorporation, qualification, or commencing to do business within this state. The yearly obligation to pay the franchise tax ends on the effective date of dissolution or withdrawal or, if later, the date the corporation ceases to do business within the state. Every corporation that incorporates on or after January 1, 2000, is not subject to the minimum franchise tax for its first taxable year. Additionally, the minimum franchise tax is not imposed for the last taxable year if that taxable year is less than 15 days as long as the corporation has not done any business within this state.

Existing state law requires that a dissolving or withdrawing corporation subject to tax in this state must pay a tax for the year it ceases to do business in California. The amount of tax owed is measured by the corporation's net income for its final taxable year, but cannot be less than the minimum franchise tax.

THIS BILL

This bill would allow the directors or the incorporators of a corporation that has not yet issued shares to dissolve by filing a signed and verified Certificate of Dissolution.

The Certificate of Dissolution would include a statement that:

- the Certificate of Dissolution is being filed in the same taxable year as the filing of the articles of incorporation,
- any debts and liabilities of the corporation have been paid, secured, or have been assumed by another entity,
- the corporation hasn't conducted any business since incorporation,
- any net assets of the corporation have been distributed to the entitled persons, if any,
- the dissolution is authorized by the directors or incorporators,
- the corporation has not issued any shares, and
- the corporation is dissolved.

This bill would allow the SOS, upon receiving a signed and verified Certificate of Dissolution, to file the Certificate of Dissolution without a Tax Clearance Certificate for that corporation from FTB. The SOS would notify FTB of the dissolution.

This bill would also make parallel technical changes in the Revenue and Taxation Code related to the dissolution.

IMPLEMENTATION CONSIDERATIONS

This bill would require the Certificate of Dissolution be filed in the same taxable year as the filing of the articles of incorporation. In certain instances, a corporation may have a short taxable year (less than 12 months). As a result, the taxable year may close before the corporation would be able to file its Certificate of Dissolution, thereby leaving the corporation ineligible to file for dissolution under this bill.

Existing corporate dissolution statutes expressly require that the “tax liability” of a dissolving corporation either be paid or be assumed by another business entity or individual. This bill requires that only the “debts and liabilities” of a dissolving corporation be paid, secured, or assumed. The bill does not use the precise term “tax liability.” Accordingly, it is suggested that this bill be amended to add the term “tax liability”. Without specific reference to tax liability, FTB would interpret “debts and liabilities” to include tax liabilities.

It is suggested that the bill include an express requirement that a final franchise tax return be filed at the time of dissolution. Such a requirement would ensure that the dissolving corporation files the necessary franchise tax return identified as a final return to give notice to the department that the entity intends to dissolve.

OTHER STATES’ INFORMATION

The states of *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* were reviewed because the tax laws in those states have similarities to California’s tax laws.

Each of these states has a different process for allowing corporations to dissolve. Generally, each of these states requires that the corporation resolve any tax obligations prior to the state recognizing the dissolution.

FISCAL IMPACT

This bill would not significantly impact the department’s costs.

ECONOMIC IMPACT

Revenue Estimate

As written, it appears this bill intends to eliminate the requirement that a Tax Clearance Certificate be obtained from the Franchise Tax Board. If this is the intent, this bill would result in no revenue losses.

LEGISLATIVE STAFF CONTACT

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